IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C.NO. 170 /2003 Single Bench

APPLICANT (Requestor) : Rathi Solvent Oil Industries
Orisa Road, Dipapara Raigarh
Through partner Gagan Rathi
Aged 34 years, R/o. Jute Mill
Ward, Dipapara Raigarh (C.G.)

VERSUS

NON-APPLICANTS :1. Tribal Co-operative Marketing
Development Federation of
India Limited. (TRIFED)
2nd Floor, NCUI Building
3 New Siri Industrial Area,
Khelgaon Marg, Hauz Khas,
New Delhi
Through Its Managing Director

2. The General Manager,TRIFED,
Old Jila Panchayat Bhawan
Collectorate Premises
At/P.O. Jagdalpur (C.G.)

P. R. No. 2930/03
Presented by Shri G.P. Sahu
dated 24.11.03

APPLICATION/REQUEST UNDER SECTION 11(5) OF THE ARBITRATION AND CONCILATION ACT 1996 FOR APPOINTMENT OF SOLE ARBITRATOR.

HIGH COURT OF CHHATTISGARH : BILASPUR

M.C.C. NO. 170 OF 2003

APPLICANT	:	RATHI SOLVENT OIL INDUSTRIES
		VERSUS
NON-APPLICANTS	:	TRIBAL CO-OPERATIVE MARKETING DEVELOPMENT FEDERAL OF INDIA LIMITED (TRIFED) AND ANOTHER

ORDER

POST FOR ORDER ON 1 -12-2006

JUDGE
30 -11-2006

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HIGH COURT OF CHHATTISGARH : BILASPUR

M.C.C. NO. 170 OF 2003

APPLICANT	:	**RATHI SOLVENT OIL INDUSTRIES**
		VERSUS
NON-APPLICANTS	:	**TRIBAL CO-OPERATIVE MARKETING DEVELOPMENT FEDERAL OF INDIA LIMITED (TRIFED) AND ANOTHER**

Present :-

Shri Ratan Pusty, counsel for the applicant.
Shri P.C. Pant with Shri Nilesh Pant, counsel for respondents No. 1 and 2.

ORDER
(1 .12.2006)

DHIRENDRA MISHRA, J

The application under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') for appointment of sole arbitrator has been placed before this Court as directed by the Hon'ble Chief Justice, High Court of Chhattisgarh.

2. Case of the applicant is that non-applicant No. 1, the Government of India undertaking, having its head office at New Delhi and Branch at old Zila Panchayat Building, Collectorate premises, Jagdalpur issued notice inviting tender for sale of *Mahuwa* seeds from interested tenderers. In response to the above NIT (Notice Inviting Tender), the applicant submitted his tender for purchase of 500 M.Ts. of *Mahuwa* seeds. His offer being highest was accepted and he was called for negotiation at Dhamtari and as a result of negotiation, oral agreement was arrived at between the parties. The rate was negotiated at the

rate of Rs. 6.25 per kilogram including all taxes. The applicant was to deposit 15% of the total value of the purchase price at the outset as security deposit including 5% of the earnest money deposit made by the applicant at the time of submitting tender. The non-applicant No.1 issued sale confirmation order dated 16.12.2000 of Annexure A/1 laying down unilateral terms and conditions of the contract vide. Since the order was in variation with the terms and conditions of the agreement, the applicant sought clarification vide his letter dated 22.12.2000 of Annexure A/2. However, the non-applicants were insistent upon the terms and conditions of Annexure A/1 vide their memo of Annexure A/4. Thereafter, the applicant on 13.2.2001 and 20.3.2001 deposited Rs. 50,000/- and Rs. 4,25,000/- towards security deposit. However, the non-applicants vide their memo dated 20.3.2001 of Annexure A/5 called upon the applicant to complete the formalities by 30.3.2001, failing which the non-applicants will be at liberty to recover the loss, whereupon the applicant deposited a further sum of Rs. 6,70,000/- towards the cost of *Mahuwa* seeds vide his covering letters of Annexures A/6 and A/7. Thereafter, delivery order of *Mahuwa* seeds was issued for 664 quintals of *Mahuwa* seeds vide Annexure A/8, though the applicant had already deposited the value for 1072 quintals of *Mahuwa* seeds. A request vide Annexure A/9 dated 26.6.2001 for issuance of delivery order for balance quantity was made by the applicant. A further request dated 11.7.2001 of Annexure A/10 for issuance of deliver order for balance quantity of *Mahuwa* seeds was again made by the applicant expressing his willingness to deposit the balance amount. However, instead of issuing delivery order as requested, the non-applicant No. 2 terminated the sale contract of Annexure A/1 vide memo dated 19.7.2001 of Annexure A/11 and directed the applicant to deposit the difference amount of

security deposit of Rs. 2,46,546/-. Thus, because of arbitrary, illegal and unjustified termination of contract the applicant has suffered a loss of Rs. 28,68,454/- as detailed in paragraph – 19 ('A' to 'H') of the instant application.

3. It is further contended by the applicant that Clause 17 of the sale confirmation order dated 16.12.2000 of Annexure A/1 contains arbitration clause in the following terms:

> "Disputes; all disputes shall be settled in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 at Delhi."

4. The applicant addressed several letters to the non-applicants for redressal of his grievances, however, the non-applicants through their letter dated 17.8.2002 of Annexure A/17 repudiated the claim of the applicant and stated that there is no case of dispute and as such there is no need for any arbitration. Ultimately, the applicant sent a notice dated 21.11.2002 of Annexure A/18 mentioning therein that the illegal termination of the contract by the non-applicants has given rise to a dispute referable for arbitration in terms of Clause 17 of the agreement and proposing the name of Mr. Justice Loknath Prasad, retired Judge of the High Court of Patna, called upon the non-applicants to confirm the appointment within 15 days from the receipt of the notice. However, the non-applicants vide their reply dated 17.12.2002 declined to agree with arbitrator suggested by the applicant and stated that there was no case of dispute and as such no need for any arbitration. Hence, the instant petition has been filed.

5. In reply, the non-applicants denied the claim of the applicant. Conditions of the oral agreement mentioned in paragraph – 4 of the application have been

denied. Out of record negotiation between the parties was also denied. However, the fact that Clause 17 of the sale confirmation order dated 16.12.2000 which mentions that all disputes are to be settled in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 at Delhi, has been admitted with a rider that since the applicant himself committed a clear breach of contract, there is no case for which the dispute is to be referred to arbitrator.

6. From the application and the documents annexed with the application, particularly the sale confirmation order of Annexure A/1, the first point for determination arises for adjudication is whether this Court has the territorial jurisdiction to entertain the instant petition under Section 11 of the Act of 1996. Clause 17 of the sale confirmation order specifically mentioned that all dispute shall be settled in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 at Delhi, though the non-applicants in their reply have not objected to territorial jurisdiction of this Court to entertain the instant application.

7. However, learned counsel for the applicant submits that there is no dispute that the non-applicant No. 1 is a body corporate incorporated under the Multi State Co-operative Societies Act, 2002 and rules framed thereunder with its registered office in the union territory of Delhi and its local office in various States including an office at old Zila Panchayat Building, Collectorate Premises, Jagdalpur (C.G.).

8. Placing reliance on the judgment of Supreme Court reported in **AIR 2004 SC 2154** in the matter of **New Moga Transport Company Vs. United India Insurance Co. Ltd and others** learned counsel for the applicant submits that the Supreme Court considering explanation to Section 20 of the C.P.C. has

categorically held that where the plaintiff is Corporation having principal office and subordinate office at different places and where cause of action arose within the jurisdiction of the subordinate office, in that case the Court within whose jurisdiction the principal office of the defendant is situate, does not have the jurisdiction but the Court within whose jurisdiction it has a subordinate office alone has the jurisdiction in respect of any cause of action arising at any place where it has also a subordinate office. However, in the instant case from the pleadings of the respective parties it is evident that the defendants had a principal office at New Delhi and subordinate office at Jagdalpur within the territorial jurisdiction of this Court and the cause of action had admittedly arose at Jagdalpur within the territorial jurisdiction of this Court and as such, the Court at New Delhi has no jurisdiction to entertain the instant application.

9. Further drawing attention of this Court to paragraph 17 of the above judgment, learned counsel for the applicant submits that it is settled law that parties by an agreement cannot confer jurisdiction to a Court which otherwise does not have the jurisdiction to deal with the matter and to that extent Clause 17 of the Sale Confirmation Order dated 16.12.2000 of Annexure A/1 could not be given effect to where the jurisdiction has been conferred at New Delhi.

10. It is further submitted that existence of arbitration clause in the document of Annexure A/1 has not been disputed by the non-applicants. From perusal of the various documents filed by the applicant it is evident that a dispute has arisen between the parties with respect to contract of sale of *Mahuwa* seeds. The sale contract of Annexure A/1 has been terminated vide Annexure A/11 and therefore, a dispute has arisen with respect to contract of sale of *Mahuwa* seed (Annexure

A/1). The applicant after failing to receive any response from the executive authorities requested the non-applicants vide request notice registered notice of Annexure A/18 to proceed for arbitration and proposed the name of Mr. Justice Loknath Prasad, Retired Judge of High Court of Patna at Ranchi to be appointed as sole arbitrator and called upon them to confirm his appointment. However, the non-applicants vide their letter dated 17.12.2002 of Annexure A/19 replied the above notice and declined to give their consent to the name proposed by the applicant on the ground that breach of contract has been committed by the applicant and therefore, there is no case of dispute which needs arbitration.

11. So far as submission of learned counsel for the applicant with respect to territorial jurisdiction of this Court to entertain this petition is concerned, no objection has been raised by the non-applicants in this regard in their reply to the petition, therefore, submission with respect to territorial jurisdiction of this Court to entertain this petition is not required to be decided.

12. Considering the fact that sale confirmation order of Annexure A/1 contains an arbitration clause and further considering that the applicant vide notice dated 21.11.2002 of Annexure A/18 had called upon the non-applicants to confirm the appointment of the arbitrator proposed by him which has subsequently been repudiated by the non-applicants vide document of Annexure A/19, a case for appointment of arbitrator is held to be made out.

13. On 24.11.2006, the matter was again posted for further hearing and on that date learned counsel for both the parties appeared and sought three days' time to propose the names of arbitrators for appointment and accordingly, they

have supplied their separate list of names of the arbitrators to be appointed as sole arbitrator.

14. From the lists submitted by the respective parties, it is observed that they have consented for appointment of Hon'ble Mr. Justice K.L. Shrivastava, Former Judge of High Court of Madhya Pradesh, as sole arbitrator to adjudicate the disputes.

15. I hereby, therefore, appoint Hon'ble Mr. Justice K.L. Shrivastava, Former Judge of High Court of Madhya Pradesh, C/o Mr. Arvind Kumar Shrivastava, District & Sessions Judge, Raigarh (C.G.), subject to his consent.

16. The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

17. Registry to intimate Hon'ble Mr. Justice K.L. Shrivastava, Former Judge of High Court of Madhya Pradesh, about his appointment as Arbitrator and to send all the papers along with address of the parties.

18. Parties are also directed to approach Hon'ble Mr. Justice K.L. Shrivastava who is presently residing at Raigarh (C.G.) and to submit papers and to take part in the arbitration proceedings.

Sd/-
DHIRENDRA MISHRA
Judge